

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEPHEN M. ROSS,

10/18/07 805 7942

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DOCUMENT
IN FEDERAL, STATE AND LOCAL
DOC #
DATE FILED: 10/18/07

Plaintiff,

07 Civ. 6119

-against-

Honorable Alvin K. Hellerstein

ROBERT K. UTLEY, III and
ANN K. UTLEY,STIPULATION AND CONSENT TO
ENTRY OF ORDER

Defendants.

Plaintiff Stephen M. Ross and defendants Robert K. Utley, III and Ann K. Utley hereby stipulate and agree, and consent to the entry of an order, as follows:

WHEREAS, the defendants have made additional payments on the promissory note referenced in the complaint in the above-captioned action (the "Promissory Note");

WHEREAS, the plaintiff acknowledges receipt of said payments;

WHEREAS, the parties to this action wish to settle the controversy between them;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT:

1. In addition to all amounts paid by defendants to plaintiff on or before the execution of this stipulation, defendants agree to deliver a good check payable to plaintiff in the amount of three hundred and fifty thousand (\$350,000.00) dollars on or before December 31, 2007.

2. Plaintiff agrees that, if defendants make the payment of \$350,000.00 described in paragraph 1 on or before December 31, 2007, such payment is a full satisfaction of plaintiff's claims in the above-referenced action, the principal and interest due on the Promissory Note, the costs of collecting on the Promissory Note, attorneys' fees and costs associated with this action,

and any loss or expense that plaintiff has sustained or incurred (or will sustain or incur) as a consequence of any default specified in the Promissory Note.

3. Upon defendants' timely payment of the amount set forth in paragraph 1 above, plaintiff agrees to execute a Stipulation of Dismissal that dismisses this action with prejudice and provides that each party will bear their own attorneys' fees and costs. Plaintiff agrees to forward a copy of the executed Stipulation of Dismissal to the undersigned counsel for defendants for execution and filing within five (5) business days after receipt of said payment.

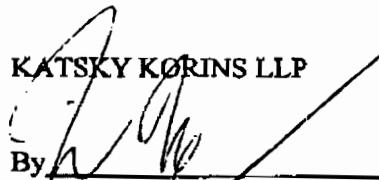
4. If defendants default in making the payment set forth in paragraph 1 above, plaintiff agrees to send a written notice to defendants (Robert K. Utley and Ann K. Utley, c/o Sherman Wyman, 3890 W. Northwest Highway, Suite 601, Dallas, Texas 75220) by certified mail advising them of same, and a courtesy copy via regular U.S. Mail to John Crews, Alston & Bird LLP, 2200 Ross Avenue, Suite 4650W, Dallas, TX 75201. During the seven (7) business days after plaintiff mails said notices (the "Cure Period") defendants shall have the right to cure this default and tender payment of \$350,000.00 to plaintiff. Plaintiff agrees to accept payment of \$350,000.00 from defendants, if made during the Cure Period, in full satisfaction of plaintiff's claims to the same extent described in paragraph 2 and, within five (5) business days after receiving such payment, agrees to execute a Stipulation of Dismissal as described in paragraph 3.

5. After the Cure Period has expired, the parties agree that plaintiff's counsel shall without further notice to defendants enter judgment herein against them, jointly and severally, in the stipulated amount of nine hundred and fifty thousand (\$950,000.00) dollars to compensate plaintiff for any and all losses or expenses that plaintiff has incurred or sustained as of that time as a consequence of any event of default specified in the Promissory Note.

6. Plaintiff and defendants consent to adjournment of the Case Management and scheduling conference in this matter, currently scheduled for October 19, 2007, 9 a.m., until further court order, and consent to a stay of all proceedings in this action until January 1, 2008.

Agreed to this 17th day of October, 2007:

For PLAINTIFF Stephen M. Ross:

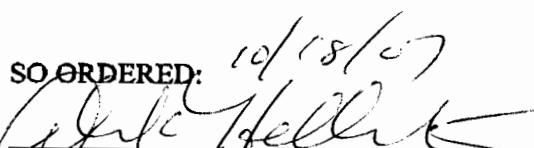

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For DEFENDANTS Robert K. Utley and Ann K. Utley:

ALSTON & BIRD LLP

By 
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212 210-9400
Attorneys for Defendants

SO ORDERED: 
10/18/07

Hon. Alvin K. Hellerstein
United States District Judge